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18 UNITED STATES DISTRICT COURT

19 DISTRICT OF NEVADA

20 Cung Le, Nathan Quarry, Jon Fitch, Brandon  
21 Vera, Luis Javier Vazquez, and Kyle  
22 Kingsbury on behalf of themselves and all  
others similarly situated,

23 Plaintiffs,

24 v.

25 Zuffa, LLC, d/b/a Ultimate Fighting  
26 Championship and UFC,

27 Defendant.  
28

Case No.: 2:15-cv-01045-RFB-(PAL)

**JOINT MOTION REGARDING  
ZUFFA, LLC'S MOTION TO  
SEAL ZUFFA, LLC'S REPLY IN  
SUPPORT OF ZUFFA, LLC'S  
MOTION TO SEAL PLAINTIFFS'  
REPLY IN SUPPORT OF  
PLAINTIFFS' MOTION TO  
CERTIFY CLASS AND RELATED  
MATERIALS (ECF NO. 554)**

**PUBLIC VERSION**

1 The parties have stated their positions at length regarding the confidentiality and propriety  
 2 of sealing portions of and documents related to Plaintiffs' Reply in Support of Plaintiffs' Motion  
 3 to Certify Class ("Plaintiffs' Class Reply"), ECF No. 554, in Zuffa, LLC's ("Zuffa's") opening  
 4 Motion to Seal, ECF No. 557, Plaintiffs' Opposition to Zuffa's motion to seal, ECF No. 558, and  
 5 Zuffa's Reply in Support of Its Motion to Seal, ECF No. 564. In order to streamline the Court's  
 6 consideration of the portions of documents Zuffa seeks to file under seal, the parties have agreed  
 7 to submit this brief joint motion for the Court's consideration pursuant to the Revised Stipulation  
 8 and Protective Order, ECF No. 217 (the "Protective Order").

9 Plaintiffs' position statement contains material that Zuffa believes should be filed under  
 10 seal. Zuffa is conditionally lodging that material under seal. Zuffa believes that the material  
 11 should be filed under seal for the reasons stated in this motion to seal and its motion to seal papers  
 12 regarding Plaintiffs' Class Reply. Plaintiffs do not believe this material should be filed under seal  
 13 for the reasons stated in this motion to seal and their opposition to the motion to seal Plaintiffs'  
 14 Class Reply.

### 15 **ZUFFA'S POSITION**

16 Zuffa seeks to file a narrow set of materials under seal in connection with its Reply in  
 17 Support of Its Motion to Seal Plaintiffs' Motion to Certify Class and Related Materials (ECF No.  
 18 554) ("MTS Reply"). Zuffa seeks to file under seal portions of the transcript of the deposition of  
 19 former Zuffa employee Michael P. Mersch ("Mersch Deposition") designated confidential and  
 20 the portion of its MTS Reply that describes that confidential information from Mr. Mersch's  
 21 deposition.<sup>1</sup> The Ninth Circuit has not determined the proper standard for sealing class  
 22 certification materials. MTS Reply at 1-3. However, this motion to seal Zuffa's MTS Reply and  
 23 a portion of Mr. Mersch's deposition is a non-dispositive motion that is unrelated to the merits of  
 24 this case as it seeks only to seal materials in the MTS Reply. The "good cause" standard therefore  
 25 applies to this motion. Under either the "good cause" or "compelling reasons" standard, for the

26  
 27  
 28 <sup>1</sup> Mr. Mersch's deposition is Exhibit 7 to the Declaration of Stacey K. Grigsby in Support of  
 Zuffa's MTS Reply ("Grigsby Decl.).

reasons described in the Table below, sealing the narrow set of materials Zuffa seeks to file under seal is appropriate.

<b>Proposed Text to be Sealed</b>	<b>Justification for Sealing</b>
Dep. of Michael P. Mersch, vol. II, July 14, 2017 (“Mersch Dep.”) 382:16-385:2	This first portion of Mr. Mersch’s deposition describes an internal, confidential e-mail and Mr. Mersch’s testimony detailing his recollection of the events described in that e-mail regarding his negotiations with a third-party Zuffa athlete as well as the bout purse information for another Zuffa athlete. In his testimony, Mr. Mersch names the athlete making the confidentiality request and describes the athlete’s request regarding that athlete’s sensitive private financial information. Mr. Mersch further discusses that athlete’s contract and how previous sensitive and confidential dealings were handled with respect to that athlete. Public disclosure of this information—which details a third-party’s request and would divulge details about that party’s private justifications and preferences for the confidential handling of his compensation information—would invade the privacy interests of a third party and would expose the substance of a confidential Zuffa business communication between two Zuffa employees. As described in Zuffa’s initial motion to seal and in the MTS Reply at pages 7-10, this confidential information, which contains confidential third-party and Zuffa information, is properly filed under seal.
Mersch Dep. 490:1-491:2	This second portion of Mr. Mersch’s deposition contains Mr. Mersch’s business address, employment and business information, and his employment status. None of this information is pertinent to this motion to seal or to this litigation. Public disclosure of this irrelevant information would serve no purpose other than to violate Mr. Mersch’s privacy. Mr. Mersch is not a Zuffa employee and was not a Zuffa employee at the time of his deposition. This information is properly filed under seal as disclosure of this information would needlessly harm the privacy interests of a non-party. Plaintiffs do not object to sealing this information.
MTS Reply, lines 27-28 on page 9 and line 1 on page 10.	For the reasons described above regarding Mr. Mersch’s discussion of an internal, confidential Zuffa e-mail detailing his recollection of a confidential negotiation with a third-party athlete, this section of the MTS Reply, which directly quotes from Mr. Mersch’s confidential testimony, is properly sealed.

1           The first portion of Mr. Mersch's deposition testimony describes an athlete's desire—  
2       communicated directly to Mr. Mersch and never reported on publicly (indeed, *preventing* public  
3       disclosure was the aim of the request)—to keep information public for reasons personal to that  
4       athlete. Zuffa seeks to keep such non-party information confidential to protect that athlete's  
5       request for confidentiality and, as described in Zuffa's MTS Reply at pages 7-10 that is a proper  
6       basis for sealing that information.

7           Plaintiffs' evidentiary objections regarding Mr. Mersch's testimony are improper. This  
8       motion is about propriety of sealing the information in Zuffa's MTS Reply. Tellingly, Plaintiffs  
9       presented no similarly direct evidence—admissible or otherwise—in their Opposition to Zuffa's  
10      motion to seal such as testimony from Zuffa's competitors or MMA athletes regarding whether  
11      such financial information is properly considered confidential and sensitive. In any event,  
12      Plaintiffs' evidentiary objections are unfounded. Mr. Mersch presented a detailed description of  
13      his recollection of what the athlete told him—regardless of whether the athlete's reasons for  
14      wanting confidentiality and privacy were true—about wanting confidentiality and discussed  
15      Zuffa's prior actions with respect to that athlete's confidentiality requests.

16           Zuffa respectfully requests that the Court grant its motion to seal portions of the Mersch  
17      Deposition and the redacted portions of its MTS Reply.

#### 18                                   **PLAINTIFFS' POSITION**

19           Zuffa fails to make the requisite showing to meet its burden under applicable law to seal  
20      portions of the Mersch deposition. Neither a fighter's personal desire to keep his purse secret,  
21      assuming Zuffa can show that desire, nor Zuffa's strategy of preventing its fighters from learning  
22      what other fighters earn comes close to a "compelling reason" or even "good cause" to seal.

23           First, Zuffa fails even to make a showing the two fighters whose purses it purports to  
24      protect as confidential expressed the desire to maintain that secrecy. As to the first fighter, Zuffa  
25      claims he expressed his wishes "directly to Mr. Mersch," but Mr. Mersch's own testimony calls  
26      27  
28

1 this assertion into question.<sup>2</sup> As to the second fighter, Zuffa makes no showing whatsoever that  
2 he expressed a desire for secrecy.

3 Second, even if Zuffa makes that showing, Zuffa fails to provide any authorities to  
4 support that such a personal desire is sufficient as a matter of law to override the legally  
5 recognized interests of the public and the press to access and assess that information.<sup>3</sup>

6 Third, even assuming Zuffa can make a showing as to the two fighters' desire for secrecy,  
7 which Zuffa cannot, and assuming the fighter's personal desire is sufficient as a matter of law to  
8 justify sealing this information from the public, which it is not, Zuffa's argument for sealing  
9 nonetheless fails. As to the first fighter, none of his financial information is revealed or could be  
10 deduced from the excerpt Zuffa seeks to seal. Mersch Dep., 382:16-385:2. As to the second  
11 fighter, while the excerpt does contain his purse information, purse information for both fighters,  
12 and many other UFC fighters, has already been publicly revealed. In fact, purse information for  
13 nearly half of Zuffa's MMA events is available from a number of websites, including Wikipedia  
14 and BloodyElbow.com.<sup>4</sup> Thus, any potential justification for preventing public access to the  
15 purse information for the second fighter is rendered moot by its prior public disclosure.

16 Further, even if the purse information were not already public, Zuffa's desire to keep  
17 secret how little it pays its fighters fails to suffice as a "compelling reason" or even "good cause"  
18 for keeping this information from the public. *See Id.* at 383:5-7 ("[REDACTED]  
19 [REDACTED]  
20 [REDACTED]"). After all, player compensation in every other major sports organization in the  
21 United States, including professional football, baseball, basketball, and hockey, is publicly  
22 available. Moreover, the purse information disclosed in the redacted passage, and any information  
23  
24

25 <sup>2</sup> Mr. Mersch admits in his testimony that because "it was a long time ago, I don't have any of the  
26 details fresh in my mind." Mersch Depo. Tr. 384: 14-15. Indeed, after claiming the request "may  
27 have" come from the fighter, Mr. Mersch hedged: "As I sit here right now, I couldn't swear to  
28 that . . ." Mersch Depo. Tr. at 383:18-25.

<sup>3</sup> *See Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006).

<sup>4</sup> *See* Rayhill Declaration ¶ 7 and Exhibits 1-4.

1 contained in the underlying documents, is four years old—too old to possess any commercial  
2 value or constitute a purported trade secret.<sup>5</sup>

3 Defendant’s statement that the motion to seal at issue does not relate to the merits of this  
4 case because it pertains to another motion to seal is inaccurate. Both sealing motions in effect  
5 seek to prevent public access to portions of the class certification briefing and related documents.  
6 Because the Court must analyze whether Zuffa’s conduct suppressed fighter compensation and  
7 harmed more than [REDACTED] of Class members, its class certification deliberations will be more than  
8 tangentially related to the merits, and thus subject to the compelling reasons standard.<sup>6</sup>

9 Moreover, neither the Protective Order nor the Court’s grant of Zuffa’s prior motions to  
10 seal prevents Plaintiffs from challenging Zuffa’s confidentiality designations. Because the  
11 Protective Order was “obtained . . . without making a particularized showing of good cause with  
12 respect to any individual document, [the parties] could not reasonably rely on the order to hold  
13 these records under seal forever.”<sup>7</sup> Further, Section 6.1 of the Protective Order permits a party to  
14 challenge a confidentiality designation “at any time,” and Plaintiffs expressly reserved their rights  
15 thereunder. The Protective Order was intended to and did allow for the timely filing of key  
16 briefing and related documents without first having to resolve confidentiality disputes. Now that  
17 class and *Daubert* filings are complete, confidentiality issues may be addressed without delaying  
18 case progress. And because Zuffa seeks to seal case records that relate to dispositive issues in this  
19 litigation, Zuffa must provide compelling reasons to seal. Zuffa fails to do so.

20 Plaintiffs do not object to Zuffa’s request to seal lines 490:1-491:2 of the deposition.  
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26 <sup>5</sup> See *Ramirez v. Trans Union, LLC*, No. 12-cv-00632-JSC, 2017 U.S. Dist. LEXIS 66194, at \*17  
(N.D. Cal. May 1, 2017) (holding that seven-year-old information was no longer a trade secret).

27 <sup>6</sup> See *Lucas v. Breg, Inc.*, No. 15-cv-00258-BAS-NLS, 2016 U.S. Dist. LEXIS 134951, at \*3-4  
(S.D. Cal. Sept. 28, 2016) (applying compelling reasons standard to class certification motion).

28 <sup>7</sup> *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1138 (9th Cir. 2003).

Dated: June 29, 2018

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**ATTESTATION OF FILER**

The signatories to this document are myself and Kevin Rayhill, and I have obtained Mr. Rayhill's concurrence to file this document on his behalf.

Dated: June 29, 2018

/s/ Stacey K. Grigsby

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing **Joint Motion Regarding Zuffa, LLC's Motion to Seal Zuffa's Reply in Support of Zuffa, LLC's Motion to Seal Plaintiffs' Motion to Certify class and Related Materials (ECF No. 554)** was served on June 29, 2018 via the Court's CM/ECF electronic filing system addressed to all parties on the e-service list.

/s/ Jerren Holdip

Jerren Holdip